

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROBERT RUSSELL,

Plaintiff,

v.

JOSEPH SAMEC, *et al.*,

Defendants.

CASE NO. 2:20-cv-00263-RSM-JRC

REPORT AND RECOMMENDATION

NOTED FOR: July 17, 2020

This matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(A)–(B). *See* Dkt. 12. Plaintiff brings suit against defendants Joseph Samec and Sean Bishop, alleging diversity jurisdiction over various tort claims.

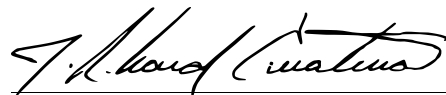
Defendant Bishop filed a motion to dismiss the complaint on March 30, 2020. *See* Dkt. 15. At the time, defendant Bishop had default entered against him. *See* Dkt. 13. After the motion to dismiss was filed, the Court granted defendant Samec’s motion to dismiss the complaint, ordered plaintiff to file an amended complaint, and vacated the entry of default against defendant Bishop. Dkts. 43, 44.

1 An amended complaint supersedes the original complaint. *Ferdik v. Bonzelet*, 963 F.2d
2 1258, 1262 (9th Cir. 1992). The original complaint is “treated thereafter as non-existent.” *Loux*
3 *v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967), *overruled on other grounds by Lacey v. Maricopa*
4 *County*, 693 F.3d 896 (9th Cir. 2012). Defendant Bishop’s motion to dismiss attacks the original
5 complaint, which will be “non-existent” because the original complaint was dismissed and an
6 amended complaint shall be filed.

7 Accordingly, the undersigned recommends that defendant Bishop’s motion to dismiss
8 (Dkt. 15) be denied as moot. The Court notes that defendant Bishop has the right to renew his
9 motion to dismiss at the appropriate time.

10 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
11 Procedure, the parties shall have fourteen (14) days from service of this Report to file written
12 objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those
13 objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the
14 time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **July**
15 **17, 2020**, as noted in the caption.

16 Dated this 24th day of June, 2020.

17
18
19 

20 J. Richard Creatura
21 United States Magistrate Judge
22
23
24